

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY LOVELL, III,

Defendant-Appellant.

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UNPUBLISHED

November 19, 2013

No. 311472

Macomb Circuit Court

LC No. 2011-004542-FH

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of first-degree home invasion, MCL 750.110a(2). Defendant was sentenced to 8 to 20 years' imprisonment. Because we conclude that there was sufficient evidence for a rational trier of fact to find defendant guilty of first-degree home invasion beyond a reasonable doubt, we affirm.

The night of October 4, 2011, Diane Fustin was awakened shortly before midnight by the ruffling of the window shade above her bed. When she woke, she saw an arm and a leg entering through the window. Fustin jumped out of bed and grabbed her telephone on the adjacent nightstand. Immediately thereafter, the arm and leg withdrew from the window. Fustin looked through the bedroom window and noticed that the window and the window's screen were wide open, although when she went to bed, the window was open an inch and the screen was completely closed. Though the plastic bar at the base of the window shade was broken, nothing was missing or damaged inside Fustin's house. After the intruder left, Fustin telephoned her husband and son, and then called the police. Officers arrived at Fustin's residence approximately ten minutes later. At that time, the screen of Fustin's bathroom window and the screen of the bedroom window through which the intruder entered were wide open, though Fustin maintained that both screens were closed earlier that evening. Police officers developed a single fingerprint found on the screen of the bathroom window, and identified the print as belonging to defendant.

At trial, defendant moved for a directed verdict on the first-degree home invasion charge on the basis of insufficient evidence. The trial court denied the motion, and the jury found defendant guilty of first-degree home invasion. Defendant now appeals as of right.

On appeal, defendant argues that there was insufficient evidence to support his first-degree home invasion conviction. Defendant alternatively argues that the trial court erred by denying his motion for a directed verdict.

We review sufficiency of the evidence issues de novo, examining the evidence in a light most favorable to the prosecution, to determine whether a rational trier of fact could have found that every essential element was proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 195-196; 793 NW2d 120 (2010). Moreover, we will not “interfere with the jury’s role of determining the weight of the evidence or the credibility of the witnesses.” *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). We review de novo a trial court’s decision on a motion for a directed verdict, examining the record to “determine whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt.” *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010).

The Court summarized the elements of first-degree home invasion in *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010) (emphasis in original):

Element One: The defendant *either*:

1. breaks and enters a dwelling or
2. enters a dwelling without permission.

Element Two: The defendant *either*:

1. intends when entering to commit a felony, larceny, or assault in the dwelling or
2. at any time while entering, present in, or exiting the dwelling commits a felony, larceny, or assault.

Element Three: While the defendant is entering, present in, or exiting the dwelling, *either*:

1. the defendant is armed with a dangerous weapon or
2. another person is lawfully present in the dwelling.

Additionally, identity is always an essential element of any criminal offense. *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009). Moreover, “because it can be difficult to prove a defendant’s state of mind on issues such as knowledge and intent, minimal circumstantial evidence will suffice to establish the defendant’s state of mind, which can be inferred from all the evidence presented.” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). A jury is permitted to make multiple inferences from the evidence presented. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Although “[i]ntent to commit larceny cannot be presumed solely from proof of the breaking and entering,” *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988), “[i]ntent may be inferred from all the facts and circumstances,” *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). The time of night, the furtiveness of the defendant, and the defendant’s flight from the scene are relevant to whether a defendant intended to commit a larceny. *People v Bowers*, 136 Mich App 284, 298; 356 NW2d 618 (1984). Additionally, “intent may reasonably be inferred from the nature, time and place of [the] defendant’s acts before and during the breaking and entering.” *Uhl*, 169 Mich App at 220. This Court has held that an entry occurring at night is indicative of the intent to commit larceny within the dwelling. See *People v Mack*, 131 Mich App 9, 12; 346 NW2d 57 (1983) (explaining that “a nighttime entry” suggested that the defendant intended to commit a larceny). This Court has also recognized that entry into a building by a defendant who does not know any of the building’s occupants supports an inference of intent to commit larceny. *Mack*, 131 Mich App at 16-17 (explaining that the intent to commit larceny was supported by the record because nothing in the record indicated that the defendant knew any of the building’s occupants).

On appeal, defendant challenges only the sufficiency of the evidence to prove identity and intent. Regarding identity, Fustin testified that her windows were closed and her screens were intact when she went to sleep that night, and when police arrived the victim’s bedroom and bathroom windows and screens had been moved. Police obtained defendant’s fingerprint from the screen on the bathroom window. Fustin testified that she did not know defendant and that there was no logical reason for him to be touching her windows. The fact that defendant’s fingerprint was discovered at the scene of the crime on the screen of a window that had been moved provides circumstantial evidence supporting the conclusion that defendant was the person who entered Fustin’s home. Under these circumstances we conclude that the evidence was sufficient to establish defendant’s identity. See *People v Ware*, 12 Mich App 512, 515; 163 NW2d 250 (1968).

Regarding intent, there was evidence that defendant entered Fustin’s home at night, through a window in the back of the home, and when Fustin got out of bed and grabbed her phone defendant fled the area. Moreover, Fustin testified that she did not know defendant, and there was no evidence of any reasonable explanation for the presence of defendant’s fingerprint on Fustin’s window or for defendant’s attempted entry into her home. Finally, the evidence demonstrated that both Fustin’s bathroom window and her bedroom window had been tampered with, suggesting that defendant first tried to enter the home through the bathroom window and when that was unsuccessful attempted to enter through the bedroom window. Considering this circumstantial evidence in the light most favorable to the prosecution, there was sufficient evidence for the jury to infer defendant intended to enter Fustin’s home in order to commit a felony, larceny, or assault.

Further, we reject defendant’s claim on appeal that the trial court erred by denying his motion for a directed verdict because the prosecution presented sufficient evidence to establish each element of first-degree home invasion. Therefore, the trial court properly denied defendant’s motion for a directed verdict.

Affirmed.

/s/ Donald S. Owens  
/s/ Kathleen Jansen  
/s/ Joel P. Hoekstra